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BEFORE THE ARIZONA CORPORATION COM.



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Arizona Corporation Commission
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Commissioner



IN THE MATTER OF THE REVIEW)
AND POSSIBLE REVISION OF)
ARIZONA UNIVERSAL SERVICE)
FUND RULES, ARTICLE 12 OF THE)
ARIZONA ADMINISTRATIVE CODE)

Docket No. RT-00000H-97-0137

IN THE MATTER OF THE)
INVESTIGATION OF THE COST OF)
TELECOMMUNICATIONS ACCESS)

Docket No. T-00000D-00-0672

NOTICE OF JOINT FILING

.Qwest Corporation and Qwest Communications Company L.L.C. jointly file the Direct

Testimony of Lisa Hensley Eckert and Peter B. Copeland, with attached exhibits.

RESPECTFULLY SUBMITTED, this 1st day of December, 2009.

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QWEST COMMUNICATIONS COMPANY, LLC

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BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN MAYES

Chairman

GARY PIERCE

Commissioner

SANDRA KENNEDY

Commissioner

PAUL NEWMAN

Commissioner

BOB STUMP

Commissioner

IN THE MATTER OF THE REVIEW AND

POSSIBLE REVISION OF ARIZONA

UNIVERSAL SERVICE FUND RULES,

ARTICLE 12 OF THE ARIZONA

ADMINISTRATIVE CODE

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DOCKET NO. RT-00000H-97-0137

IN THE MATTER OF THE INVESTIGATION

OF THE COST OF TELECOMMUNICATIONS

ACCESS

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DOCKET NO. T-00000D-00-0672

DIRECT TESTIMONY

OF

PETER B. COPELAND

ON BEHALF OF

QWEST CORPORATION

DECEMBER 1, 2009

DIRECT TESTIMONY OF PETER B. COPELAND

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST CORPORATION.

A. My name is Peter B. Copeland. My business address is 1801 California Street, Denver, Colorado, and I am currently employed by Qwest Corporation ("Qwest") as Director of Cost and Economic Analysis in the Public Policy department.

Q. PLEASE REVIEW YOUR EDUCATION, WORK EXPERIENCE, AND PRESENT RESPONSIBILITIES.

A. I have a Bachelor of Arts degree from Brown University in Urban Studies and a Master of Public Administration from the University of Colorado. I have been employed by Qwest, its predecessor companies, and Bellcore¹ for the past 28 years. My experience with Qwest and Bellcore includes responsibility for the development of wholesale and retail cost studies, models of the local exchange network, universal service advocacy and models, jurisdictional separations, and rate development. My current responsibilities include the development of universal service policy and testimony, as well as supervision and development of all wholesale and retail forward-looking regulatory cost studies for Qwest. Additionally, my group provides economic analysis for regulatory proceedings.

Q. HAVE YOU TESTIFIED IN ARIZONA PREVIOUSLY?

A. No. However, I have testified before the state commissions in Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Utah,

¹ Bellcore (Bell Communications Research) provided certain centralized research and standards coordination for the regional Bell operating companies (RBOCs). It also coordinated security and emergency preparedness for the U.S. government. Bellcore was formed in 1984 when AT&T was broken up into the seven RBOCs. Bellcore is now known as Telcordia and provides similar contractual services to any entity.

1 Washington, and Wyoming and I have appeared on FCC panels concerning the
2 modeling of forward-looking costs.

3 **II. PURPOSE OF TESTIMONY**

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. My testimony presents Qwest's views of the interplay between access reform in
6 Arizona and reform of the Arizona universal service rules. I discuss Qwest's
7 views concerning universal service in Arizona and provide discussion of the
8 universal service hearing issues enumerated in the procedural order.

9 **III. OVERVIEW OF QWEST'S UNIVERSAL SERVICE AND ACCESS**
10 **REFORM POSITIONS**

11 **Q. PLEASE SUMMARIZE THE PRINCIPLES UNDERLYING QWEST'S**
12 **VIEW OF UNIVERSAL SERVICE AND RELATED ACCESS REFORM**
13 **ISSUES.**

14 A. Qwest believes that six basic principles should be considered when establishing
15 universal service policies.

- 16 1. A uniform USF mechanism should be established that treats rural and non-
17 rural carriers alike;
- 18 2. There should be parity with regard to regulatory oversight of all ETCs;
- 19 3. Universal service programs should initially focus on the responsibility of
20 carriers to recover the cost of service from their own end user customers;
- 21 4. In high cost areas it is appropriate to recover a portion of the additional
22 costs above state-wide averages from the end user customer;
- 23 5. Universal service support should be targeted at the wire center geographic
24 level;

1 6. Receipts from federal high cost universal service funds must be considered
2 when establishing the need for state universal service funds.

3 In the following questions and answers, I elaborate on each of the principles.

4 **Q. WHY IS IT NECESSARY TO TREAT ALL HIGH COST CUSTOMERS**
5 **THE SAME?**

6 A. Currently, high cost customers are essentially treated differently due to the
7 differences in the universal service regulations for small and larger carriers. For
8 example, rural carriers in Arizona receive over \$31M² in support annually
9 through FCC high cost support mechanisms to offset the small carriers' high
10 intrastate costs. In contrast, Qwest receives no federal support to offset its costs
11 of serving high cost rural customers in Arizona. Qwest must recover the high
12 costs it incurs in rural areas through implicit subsidies from the rates of other
13 services in lower cost urban areas. Because of these types of disparities, Qwest
14 proposes that all eligible telecommunications carriers serving high cost customers
15 should be treated under a single set of rules.

16 **Q. SHOULD ALL ELIGIBLE TELECOMMUNICATIONS CARRIERS**
17 **(ETCS) PROVIDE SERVICE UNDER THE SAME SET OF RULES?**

18 A. Yes. The ETC obligations for ubiquitous service throughout the designated
19 service territory, advertising, and service quality should be the same for all ETCs.
20 It only makes common sense that ETCs who collect identical support for serving
21 a high cost area also should shoulder the same obligations and requirements.

² USAC report HC-01 for the first quarter 2010. This report is available at:
<http://www.usac.org/about/governance/fcc-filings/2010/quarter-1.aspx>

1 **Q. WHAT ROLE DOES RATE RESTRUCTURING PLAY IN UNIVERSAL**
2 **SERVICE AND ACCESS REFORM?**

3 A. For purposes of both universal service and access reform, rate restructuring plays
4 a critical role. Prior to receiving universal service support or access replacement
5 fund support through a general surcharge on intrastate revenues of other carriers,
6 the fund recipient needs to ensure it is charging appropriate and fair rates to its
7 end user customers. The end user customers of other carriers must not be
8 burdened with supporting other carrier's customers when those customers are not
9 being charged rates commensurate with either the costs of their service or the
10 rates charged to other end users in the state for comparable service. Therefore,
11 the Commission should establish benchmark rates for basic local service that
12 ensure end user customers are treated in a fair and consistent manner throughout
13 the state. Qwest recommends that the residential benchmark rates be set at 125
14 percent of the weighted average Arizona residence rate and the business
15 benchmark be set at 125 percent of the weighted average Arizona business basic
16 exchange rates.

17 **Q. WHAT ARE THE ADVANTAGES OF TARGETING HIGH COST**
18 **SUPPORT FOR UNIVERSAL SERVICE TO THE GEOGRAPHIC AREA**
19 **OF THE WIRE CENTER?**

20 A. Targeting support has two major advantages over providing support over the
21 entire service area. First, targeting high cost support to the wire center is a
22 method to align the cost to serve a specific geographic area with the universal
23 service funding. This develops the fund size in the manner necessary to recover
24 only the cost of a specific limited geographic area and limit the fund size only to
25 the necessary amount. Second, specific geographic targeting helps limit fund
26 growth in areas that are not high cost. This situation can occur when universal
27 service support is targeted to the entire area of LEC operations and the area of
28 operations includes some lower cost to serve areas.

1 **Q. WHY SHOULD RECEIPTS FROM FEDERAL HIGH COST SUPPORT**
2 **BE INCLUDED IN CALCULATIONS OF STATE HIGH COST**
3 **UNIVERSAL SERVICE SUPPORT?**

4 **A.** The federal high cost universal service funds are designed to offset specific
5 intrastate costs. Therefore, in order to calculate the need for intrastate support, it
6 is necessary to account for support already received from the federal programs
7 that reduce intrastate costs.

8 **IV. RESPONSE TO SPECIFIC ISSUES WITHIN THE PROCEDURAL**
9 **ORDER**

10 **Q. IF ACCESS RESTRUCTURING TAKES PLACE IN ARIZONA, WHAT**
11 **REVENUE SOURCES SHOULD BE MADE AVAILABLE TO**
12 **COMPENSATE FOR THE LOSS OF INTRASTATE ACCESS**
13 **REVENUES?**

14 **A.** Qwest recommends that all LECs which reduce their intrastate access levels in
15 Arizona must meet certain conditions prior to being eligible to receive any access
16 replacement funds from the AUSF. First, LECs should only be eligible for access
17 replacement funds through the AUSF to the extent the LECs rate for basic
18 exchange service meets or exceeds a Commission-determined affordability
19 benchmark. Qwest recommends that the residential benchmark rates be set at 125
20 percent of the average Arizona residence rate and the business benchmark be set
21 at 125 percent of the average Arizona business basic exchange rates. If setting
22 basic local exchange rates at the benchmark allows the LEC to recover its reduced
23 intrastate access revenues in a revenue neutral manner, then the AUSF is not
24 implicated and the next step need not take place.

25 The second step only takes place to the extent the LEC cannot recover its
26 intrastate access revenue reductions through the increase on local rates to the
27 Commission-determined benchmark. In the second step, the LEC should file an

1 earnings investigation with the Commission. The Commission can then
2 determine whether the ETC should receive access replacement funding from the
3 AUSF to compensate ETCs for their intrastate access reductions that exceeded the
4 revenues gained from increasing the basic local exchange rates to the benchmarks.
5 This earnings analysis should also consider the level of funding the ETC receives
6 from the Federal USF (FUSF) that is used to offset intrastate costs. In addition to
7 providing the Commission with a way to determine the compensability of reduced
8 intrastate access rates, an earnings investigation will also provide accountability
9 and assist in preventing an uncontrollable fund. The current Commission rules
10 provide the Commission flexibility to consider a simplified earnings review
11 mechanism. This would avoid the considerable cost of preparing a full rate case
12 by the carrier or review by the Commission.

13 **Q. HOW MUCH OF INTRASTATE ACCESS COST RECOVERY, IF ANY,**
14 **SHOULD BE SHIFTED TO END USERS? WHAT SHOULD BE THE**
15 **ROLE OF BENCHMARK RATES AND HOW SHOULD THE**
16 **BENCHMARK BE SET?**

17 **A.** As discussed above, Qwest recommends that the Commission set its benchmark
18 rates to 125 percent of the state-wide average rates for residential and business
19 local exchange rates. For example, if the statewide average residential rate
20 happened to be Qwest's residential rate of \$13.18, the benchmark of 125 percent
21 would be \$16.48. Thus, in this example, a LEC which reduced its access rates
22 could increase its residential basic local exchange rate up to \$16.48, as well as a
23 corresponding business rate increase to the business benchmark. If the LEC did
24 not need to increase its basic exchange rates all the way to the benchmarks, the
25 LEC would only increase the rates to a level to achieve revenue neutrality.

26 The Commission would set the benchmark rates through a rulemaking process in
27 which they considered the affordability of specific benchmarks. To the extent

1 that the Commission felt that setting the benchmarks above current statewide
2 averages could jeopardize universal service, the Commission could also examine
3 the expansion of the lifeline program, such that the affordable benchmark could
4 be raised without impacting the current penetration of basic local service.

5 **Q. PROCEDURALLY, WHAT WILL BE REQUIRED OF A CARRIER IF IT**
6 **SEEKS A "REVENUE NEUTRAL" INCREASE IN LOCAL RATES?**

7 A. As stated above, the first step that is necessary is that the Commission approves
8 rules and basic local service rate benchmarks. In this rulemaking the Commission
9 should also set the filing parameters for local rate increases up to the benchmarks.
10 These parameters should include multi-year transition periods for moving to the
11 benchmark, if the increase is greater than an amount defined by the Commission.
12 Additionally, the phase-down of the intrastate access rates would take place in a
13 revenue-neutral manner in each phased step. The Commission's current customer
14 notice requirements are sufficient and do not need to be supplemented for this
15 purpose.

16 **Q. CAN YOU PROVIDE AN EXAMPLE OF HOW A REVENUE NEUTRAL**
17 **MECHANISM WORKS?**

18 A. Yes. The use of a revenue neutral mechanism that lowers intrastate access
19 charges and replaces the lost revenue with charges on end users involves a three
20 step process. First, the Commission would set a historical base year for
21 determining the demand quantities for intrastate access minutes of use and end
22 user demand. Second, using the historical base year demand, each carrier
23 calculates the annual intrastate access revenue reduction that occurs from moving
24 from the current rate to the target rate. The third and final step determines the end
25 user rate increase required to collect the reduction in intrastate access revenue
26 calculated in the second step. The monthly end user rate increase is the step two

1 revenue reduction divided by the base period end user demand quantities divided
2 by 12.

3 **Q. ASSUMING THAT AUSF FUNDS WILL ALSO BE USED AS A**
4 **COMPENSATING REVENUE SOURCE, WHAT SPECIFIC REVISIONS**
5 **TO THE EXISTING RULES ARE NEEDED TO ALLOW USE OF AUSF**
6 **FUNDS FOR THAT PURPOSE?**

7 A. The current rules would require some modification to specifically allow access
8 replacement to be provided through AUSF. Carriers requesting AUSF support are
9 required to make a financial showing under the Commission's rules. Specifically,
10 R14-2-1203, requires the following in connection with a request for AUSF support:

11 "A filing under R14-2-103 or other method as the Commission may
12 prescribe."

13 Carriers requesting AUSF support are required to make a financial showing under
14 the Commission's rules. However, R14-2-1203 does not require the rate case
15 information described in R14-2-103, but allows another method as the
16 "Commission may prescribe". Therefore, the Commission could possibly define a
17 suitable simplified earnings showing.

18 If the Commission increases the current AUSF disbursements by including
19 intrastate access replacement support, the funding mechanism for AUSF must be
20 addressed. The source of the funding of the AUSF should be based on a method
21 that requires all carriers operating and offering intrastate telecommunications
22 services in Arizona to contribute in an equitable and non-discriminatory manner –
23 it should be sustainable and competitively and technologically neutral. Carriers
24 operating wireline, wireless, and cable telephony should all contribute to the
25 AUSF (and potentially receive funds from it, as an eligible telecommunications

1 carrier [ETC]), in an equal manner. The contributions could be based on total
2 retail telecommunications intrastate revenue. To arbitrarily assess 50 percent of
3 the collection burden on traditional long distance carriers, as is currently the case,
4 is not a sustainable methodology, given the massive reduction in long distance
5 volumes that have resulted from wireless competition. If AUSF assessments
6 apply to only some of those services or to only some providers of those services,
7 the customers of those providers will be disadvantaged and the providers will be
8 placed at a significant competitive disadvantage. The Commission should
9 therefore fund the AUSF in a broad-based, competitively neutral manner so that
10 all intrastate customers and carriers contribute to the Fund.

11 **Q. WHICH CARRIERS SHOULD BE ELIGIBLE FOR AUSF SUPPORT?**

12 A. Eligibility for intrastate access replacement funds and high cost funds should be
13 available to all LECs, as long as the LECs meet the basic exchange rate
14 benchmark requirements and the earnings showing requirements as described
15 above.

16 **Q. WHAT SHOULD BE SUPPORTED BY AUSF? ACCESS**
17 **REPLACEMENT ONLY? HIGH COST LOOPS? LINE EXTENSIONS?**
18 **CENTRALIZED ADMINISTRATION AND AUTOMATIC**
19 **ENROLLMENT FOR LIFELINE AND LINK-UP?**

20 A. If the Commission chooses to amend its rules as suggested above, it may fund
21 intrastate access reductions through the AUSF. The current rules already provide
22 for the funding of high cost loops. Finally, it is an appropriate use of AUSF to
23 fund the centralized administration and automatic enrollment for lifeline and link-
24 up. In order to fund these last programs, the Commission's current rules must be
25 amended to include this disbursement from the fund.

1 **V. SUMMARY OF TESTIMONY**

2 **Q. CAN YOU BRIEFLY SUMMARIZE YOUR TESTIMONY?**

3 A. Yes. With the proper rule changes, the AUSF can be utilized to cushion the
4 effects of intrastate access rebalancing. However, in order to be eligible to utilize
5 the AUSF for access reform, carriers must first increase end user rates to a
6 benchmark level determined by the Commission. In order to receive support from
7 the AUSF, carriers must meet the terms of a simplified earnings showing per the
8 existing rules. Additionally, the basis for collecting the AUSF funds should
9 change to a uniform surcharge on intrastate revenues rather than the current
10 collection mechanism.

11 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

12 A. Yes.

**IN THE MATTER OF THE REVIEW AND
POSSIBLE REVISION OF ARIZONA
UNIVERSAL SERVICE FUND RULES,
ARTICLE 12 OF THE ARIZONA
ADMINISTRATIVE CODE**

DOCKET NO. RT-00000H-97-0137

**IN THE MATTER OF THE
INVESTIGATION OF THE COST OF
TELECOMMUNICATIONS ACCESS**

DOCKET NO. T-00000D-00-0672

STATE OF DENVER
COUNTY OF DENVER

AFFIDAVIT OF PETER COPELAND

: SS

1. My name is Peter Copeland. I am Director, Legal Issues for Qwest Corporation in Denver, Colorado. I have caused to be filed written Direct Testimony in Docket Nos. RT-00000H-97-0137 and T-00000D-00-0672.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

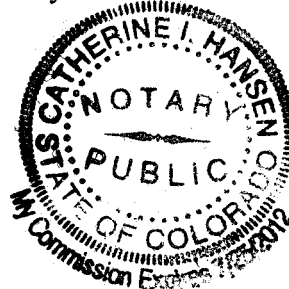
Peter Copeland

Peter Copeland

Catherine Hansen

Notary Public

My Commission Expires: 7/25/2012



BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN MAYES

Chairman

GARY PIERCE

Commissioner

SANDRA KENNEDY

Commissioner

PAUL NEWMAN

Commissioner

BOB STUMP

Commissioner

IN THE MATTER OF THE REVIEW AND

POSSIBLE REVISION OF ARIZONA

UNIVERSAL SERVICE FUND RULES,

ARTICLE 12 OF THE ARIZONA

ADMINISTRATIVE CODE

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IN THE MATTER OF THE INVESTIGATION

OF THE COST OF TELECOMMUNICATIONS

ACCESS

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DOCKET NO. RT-00000H-97-0137

DOCKET NO. T-00000D-00-0672

DIRECT TESTIMONY

OF

LISA HENSLEY ECKERT

ON BEHALF OF

QWEST CORPORATION

AND

QWEST COMMUNICATIONS COMPANY, LLC

DECEMBER 1, 2009

DIRECT TESTIMONY OF LISA HENSLEY ECKERT

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME. CURRENT TITLE, EMPLOYER AND BUSINESS ADDRESS.

A. My name is Lisa Hensley Eckert. I am Staff Director in the Public Policy Organization at Qwest Corporation. My business address is 1801 California Street, 47nd Floor, Denver, Colorado 80202.

Q. FOR WHOM ARE YOU TESTIFYING?

A. I am testifying on behalf of two Qwest entities: Qwest Corporation, the Incumbent Local Exchange Carrier (ILEC) in Arizona and 13 other states, and Qwest Communications Company, LLC ("QCC"), an interexchange carrier and a competitive local exchange carrier providing service across the country.

Q. PLEASE REVIEW YOUR EDUCATION, WORK EXPERIENCE, AND PRESENT RESPONSIBILITIES, AS THEY PERTAIN TO THIS PROCEEDING.

A. I obtained Bachelor of Science degrees in History, Psychology and Physical Anthropology (general social sciences) from Kansas State University. I then attended and graduated from University of Denver College of Law in December 1995 with a Juris Doctorate. I have been a member of the Colorado Bar since 1996.

I joined U S WEST in 2000, as a Project Manager in the Network Organization. I then moved to the Network Technical Regulatory team from 2001 to 2003, responsible for addressing network-related questions in the various proceedings on the § 271 applications of Qwest Corporation. In particular, I worked with external auditors and internal teams to develop responses to questions regarding internal process and procedures related to § 271, while supporting the lead witnesses on material issues during the § 271 process.

1 In November, 2003, I accepted the position of Staff Director in the Public Policy
2 Organization, responsible for company-wide Intrastate Inter-carrier Compensation
3 issues, such as switched access, reciprocal compensation and SS7 signaling. I
4 have developed the company-wide advocacy concerning the restructuring of
5 access rates, its position on the subsidies included in access rates, and how
6 reforming access should be approached at the state level. In 2006, I took on the
7 additional responsibility of Federal Inter-carrier Compensation advocacy.

8 **Q. HAVE YOU TESTIFIED IN ARIZONA PREVIOUSLY?**

9 A. I have not testified in Arizona, although I have participated in the workshop
10 process for the access investigation docket. I have testified before state regulatory
11 commissions in Iowa, Nebraska, Colorado, South Dakota, California, and
12 Pennsylvania.

13 **II. PURPOSE OF TESTIMONY**

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A. The purpose of my testimony is to discuss the general policy matters regarding
16 intrastate switched access rates in Arizona.

17 **Q. WHAT IS QWEST'S POLICY ON INTRASTATE ACCESS CHARGE**
18 **REFORM?**

19 A. Access reform is necessary in Arizona. Both Qwest entities support revenue
20 neutral and competitively neutral Intrastate switched access reform.

21 **Q. PLEASE SUMMARIZE QWEST'S POSITION ON SWITCHED ACCESS**
22 **REFORM.**

23 A. Switched Access Reform must be revenue neutral to the carriers and
24 competitively neutral. What this means is that for intrastate switched access
25 reform to occur, the LECs lowering their access rates have a right to recover those
26 access rates from an increase in the local rates. Switched access rates are an

1 implicit subsidy supporting the local loop. Without the ability to either raise local
2 rates or collect from a state Universal Service Fund, these reductions simply
3 become lost revenue which may affect the ability of the LEC to adequately
4 maintain and expand its network. . Any reductions in switched access should be
5 treated in a revenue neutral manner, allowing the LEC to raise the local rates to
6 recover the reduction. If, and only if, those local rates have been raised to a
7 benchmark level, would the LECs be allowed to recover additional dollars from a
8 USF. Qwest witness Peter Copeland discusses Qwest's position with regard to
9 utilization of the Arizona Universal Service Fund in connection with switched
10 access reform.

11 Switched access reform must be competitively neutral. As I discuss below, access
12 rates must not create distortions that artificially affect market outcomes between
13 and among different types of carriers.

14 Qwest's ILEC has reduced its switched access rates numerous times in Arizona,
15 in accordance with orders issued by the Arizona Corporation Commission (the
16 "Commission"). Qwest's access charge reductions, totaling \$27 M on an
17 annualized basis, have occurred as follows:

<u>Date</u>	<u>Amount</u>	<u>Order No.</u>
4-1-01	\$5.0 M	63487
4-1-02	\$5.0 M	63487
4-1-03	\$5.0 M	63487
4-1-06	<u>\$12.0 M</u>	68604
Total	\$27.0 M	

18 However, none of the other LECs in Arizona, whether they are incumbent LECs
19 or CLECs, have made any reductions to the rates they have on file at the

1 Commission as part of access reform. Indeed, as has become apparent through an
2 examination of heretofore secret contracts between CLECs and certain IXC, the
3 actual rates that CLECs charge vary from IXC to IXC, and in certain contracts the
4 actual effective rate is still not even known. It is therefore important that the
5 Commission examine the actual effective rates that have been charged by LECs
6 for intrastate switched access, and establish a consistent approach to how such
7 rates are set. Switched access rates, whether offered by tariff or by contract,
8 should be published, and available to all IXCs equally. LECs should not be
9 allowed to combine intrastate switched access with other LEC services in a way
10 that obscures the price or effectively discounts the price of intrastate switched
11 access.

12 **Q. WHAT IS SWITCHED ACCESS?**

13 A. Switched access is the service which allows long distance companies, Inter
14 Exchange Carriers (IXCs), to connect to the local customers of a Local Exchange
15 Carrier (LEC). Dating from the time of the break-up of the old Bell Telephone
16 System, the switched access charges of the LEC were meant to subsidize the local
17 loop. Since that time, switched access has been paid by the IXC as a method of
18 keeping local rates low.

19 **Q. DOES THIS MODEL WORK TODAY?**

20 A. No. With the advent of competition, allowing implicit subsidies becomes
21 increasingly difficult. When different technologies pay different rates for similar
22 calls, the continued viability of the entire system is undermined. Likewise, when
23 the regulatory classification of the local exchange company dictates higher or
24 lower access rates, the door is open to market distortion and arbitrage
25 opportunities. For example, Rural ILECs are allowed to charge higher switched
26 access rates at the Interstate level—a disparity which has driven traffic pumping
27 activities in some states. Likewise, some IXCs intentionally changed the
28 jurisdiction on long distance calls in order to make them appear to be local, rather

1 than long distance, calls, thereby changing the amount owed to the local exchange
2 carrier for the call.

3 **Q. DO IXCS HAVE ANY CHOICE IN WHAT LEC ORIGINATES OR**
4 **TERMINATES A LONG DISTANCE CALL?**

5 A. No. Switched access has long been identified as a terminating monopoly. That
6 is, whatever LEC has the relationship with the end user, that LEC is the only
7 conduit for terminating a long distance call to that end user's telephone number.
8 For this reason, switched access is not classified as a competitive
9 telecommunications service, regardless of whether it is the switched access
10 service of a CLEC or an ILEC.

11 **III. ARIZONA SPECIFIC ISSUES**

12 **Q. WHAT CARRIERS SHOULD BE COVERED BY ACCESS REFORM?**

13 A. This proceeding is the first time that the Commission has generically scrutinized
14 the switched access charge issue in the context of CLECs and rural ILECs. In
15 fact, the Commission some years ago bifurcated the docket into two phases.
16 Phase I was to address Qwest's rates in its Price Cap Plan, and Phase II was to
17 address all other carriers rates.

18 Phase I was completed. As discussed previously, Qwest's switched access rates
19 have been reduced multiple times, for a total of \$27 Million dollars annually. The
20 repeated decreases in Qwest's switched access rates in Arizona have resulted in a
21 competitive distortion in the market place due to the CLECs continuing to
22 subsidize their local rates with higher switched access rates than Qwest. Further,
23 the Rural LEC access rates remain high, as well. These higher rates not only
24 distort the market, but they increase the likelihood of arbitrage. Therefore,
25 Arizona should focus on CLEC and Rural ILEC access rates in Arizona for this
26 phase of access reform.

1 **Q. HOW DO HIGHER CLEC ACCESS RATES CAUSE MARKET**
2 **DISTORTIONS?**

3 A. For the most part, CLECs are offering services to the public through the use of
4 leased facilities. For example, a CLEC using Qwest's product known as Qwest
5 Platform Plus (the UNE P replacement product) purchases the use of switching
6 and transport functions which are actually provided by Qwest. CLECs sometimes
7 charge rates as high as 5.7 cents per minute in Arizona—more than twice the rate
8 charged by Qwest, even though the switching is done completely by Qwest. In
9 fact, IXC's do not have visibility to the call as a CLEC call, until the bill is
10 received. It looks like an ILEC call, but is charged at a much higher rate. There
11 are no functional or cost reasons why a CLEC should be allowed to charge a
12 premium.

13 The other distortion in the market is with the local rates. CLECs charge very high
14 switched access rates--a subsidy for the local loop—and use that to undercut the
15 local rate of the LEC with whom they compete, or to generate additional margin
16 on their services. While some CLECs simply match the local rates of the
17 company they compete against, others undercut the local rates by a range of
18 between 18 cents and 4 dollars per month, per local line.

19 **Q. WHAT CLEC COSTS SHOULD BE INCLUDED IN DETERMINING**
20 **SWITCHED ACCESS RATES?**

21 A. The cost of providing switched access is much lower than the current rates. This
22 has allowed regulators to utilize the higher margins associated with the service to
23 keep the price of the local loop low. Therefore, to the extent that costs are
24 considered by the Commission, they need not be a major focus of this proceeding.
25 Indeed, CLECs should not be allowed to add in all costs of doing business—
26 essentially the kitchen sink approach—to determine what the appropriate
27 switched access rate should be in AZ. In essence, they are asking for a rate of

1 return approach without the obligations of filing cost studies subject to regulatory
2 scrutiny.

3 **Q. WHAT IS AN EXAMPLE OF AN INAPPROPRIATE COST**
4 **ATTRIBUTED TO SWITCHED ACCESS?**

5 A. One example would be using special access costs as a basis for charging higher
6 switched access. Special access is a replacement for switched access—in essence
7 an access reduction tool used by IXC—either Direct End Office Trunks (DEOT)
8 or as dedicated facilities to a high volume customer to avoid the switch
9 completely. In some instances, special access is used as a local access product
10 with point to point or backbone drop off. None of these are costs of switched
11 access.

12 **Q. TO WHAT TARGET LEVEL SHOULD SWITCHED ACCESS RATES BE**
13 **REDUCED?**

14 A. Qwest believes that setting a statewide rate for all LECs is an appropriate way to
15 stop arbitrage and create a level playing field for all companies competing in
16 Arizona. Qwest has found over the last several years that benchmarking LEC
17 switched access rates to the FCC rates does not reduce the number of disputes or
18 arbitrage problems, because the FCC treats different types of LECs differently
19 based on the idea that switched access should subsidize the local rate in higher
20 cost areas. This structure unfortunately has invited fraud and arbitrage, and
21 Qwest's position is that intrastate rates should be uniform for all LECs across all
22 of Arizona.

23 The ideal rate for reducing arbitrage and bringing equity among competing LECs
24 would be to bring all LECs in Arizona to the same rate as Qwest's Intrastate
25 switched access rate. Qwest's filed switched access rates are the lowest tariff
26 rates among the LECs in the state. Further, as discussed below, the ILEC rate is
27 a commonly stated objective of the secret access agreements, and since Qwest is

1 the largest ILEC and has the lowest ILEC rate, Qwest's rate should be the
2 objective. This would be a significant reduction for the Rural LECs, therefore a
3 transition period of one to three years would be warranted. For CLECs, the FCC
4 currently mandates that if the CLECs choose to tariff their rates, they must
5 benchmark access rates to the LEC with whom they compete. Arizona should
6 mirror that rule for intrastate traffic, and bring the CLECs to Qwest's intrastate
7 rate.

8 This is the approach followed in many other states. Many states, following the
9 lead of the FCC, have similarly adopted mirroring rules. In particular, while I
10 have admittedly not surveyed each state's regulation of CLEC access rates, I am
11 aware that California,¹ New York,² Maryland,³ Connecticut,⁴ Pennsylvania,⁵

¹ *Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunication Utilities, Order Instituting Rulemaking for the Purposes of revision General Order 96-A Regarding Informal Filings at the Commission, D.07-09-019, at 23, 2007 Cal. PUC LEXIS 427 (Sept. 6, 2007)* (imposing a CLEC cap of \$.025 per minute effective April 1, 2008, and a CLEC cap of the highest ILEC rate plus 10%, effective January 1, 2009).

² *Case 94-C-0095, Opinion 98-10 (1998), 1998 N.Y. PUC LEXIS 325, at *40-41* ("Under our existing policy, competitive local exchange carriers are authorized to levy access charges subject to the constraint that their rates not exceed those of the largest carrier in the LATA without a showing that higher rates are cost-based and in the public interest. [footnote omitted] Accordingly, absent further action, the access charges of competitive local exchange carriers in New York Telephone's LATAs, and new entrants, must be reduced along with New York Telephone's. This link should be maintained. In what is an increasingly vertically integrated environment, with companies competing to provide both local and long distance service, access charges should be symmetrical.").

³ *Code of Maryland Regulations § 20.45.09.03(b)* (requiring all facilities-based LECs to modify their intrastate switched access rates to ensure that they do not exceed the rates of the largest LEC in Maryland).

⁴ *DPUC Investigation of Intrastate Carrier Access Charges, Docket No. 02-05-17, Decision (2004), 2004 Conn. PUC LEXIS 15, at *45* (requiring all LECs, including ILECs and CLECs, to implement a common price cap on intrastate access charges unless they can demonstrate through cost studies that higher rates are justified).

⁵ *66 Pa.C.S. § 3017(c) (2006)* ("No telecommunications carrier providing competitive local exchange telecommunications service may charge access rates higher than those charged by the incumbent local exchange telecommunications company in the same service territory unless such carrier can demonstrate that the higher access rates are cost justified.").

1 Virginia,⁶ and Missouri⁷ each impose a mirroring restriction on CLEC intrastate
2 switched access charges akin in some degree to the FCC's rule for interstate
3 switched access.

4 **Q. ARE THE CLEC RATES CURRENTLY HIGHER THAN THE ILEC**
5 **RATES?**

6 A. The CLEC rates vary wildly, with some CLECs charging rates very close to the
7 ILEC rates, and others CLECs charging significantly higher rates. In addition,
8 some CLECs charge blended rates which embed elements into the rate which they
9 do not actually provide. However, except for aberrations in the case of the secret
10 access agreements many CLECs have entered into with certain IXCs, it is clear
11 that overall the CLEC switched access rates are higher than Qwest's switched
12 access rates.

13 **Q. ARE SWITCHED ACCESS SERVICES COMPETITIVE?**

14 A. No. As mentioned before, switched access is considered a bottleneck facility,
15 regardless of whether it is provided by an ILEC or a CLEC. In order for an IXC
16 to terminate a call to the telephone number of a LEC, the only way to reach that
17 customer is through the LEC. If an IXC wants the ability to connect its customers
18 (the calling party) ubiquitously, then they must terminate through the LEC who
19 has the relationship with the called party. These agreements were produced
20 under subpoena, and the respondents designated them as "HIGHLY
21 CONFIDENTIAL." Under the terms of the Protective Order entered in these

⁶ 20 VAC 5-417-50 (CLEC's intrastate switched access rate may not exceed the higher of its interstate rate or the aggregate ILEC intrastate rate in the area service is being provided).

⁷ *In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri, Case No. TO-99-596, Report and Order (June 1, 2000), 2000 Mo. PSC LEXIS 996, at *28-31* (capping CLEC exchange access rates at the "level of the access rates of the directly competing ILEC."). In the *Report and Order*, the Missouri PSC specifically rejected as unreasonable the CLEC argument that CLECs be permitted to charge a certain percentage above the resident ILEC's rate. *Id.* at * 31.

1 dockets, strict processes govern the reproduction of the data and introduction into
2 evidence. Accordingly, copies are not attached to this testimony at this time.

3 **IV UNFILED CLEC AGREEMENTS**

4 **Q. HAVE CLECS ENTERED INTO SECRET SWITCHED ACCESS**
5 **AGREEMENTS WITH SOME IXCS?**

6 A. Yes. AT&T, MCI, and Sprint have produced agreements which they have entered
7 into for reduced switched access rates from a number of CLECs.

8 **Q. DON'T AGREEMENTS FOR LOWER SWITCHED ACCESS FROM**
9 **CLECS MOVE TOWARDS REFORM?**

10 A. Not the way these agreements have been done, because these agreements are not
11 publicly disclosed, are not available to all IXCs, and do not set a stand-alone rate
12 for switched access. Every agreement that AT&T, MCI, and Sprint produced in
13 response to Qwest's subpoena was classified as "Highly Confidential." The fact
14 that Qwest had to go to great lengths to obtain the agreements, which were
15 ultimately produced subject to the protective order in this docket, indicates that
16 the CLECs are operating in a clandestine fashion even today. The special
17 switched access rates were only offered to a limited number of IXCs, and the
18 CLECs have continued to charge the exorbitant rates to other IXCs. Further, the
19 agreements are not a "permanent" solution. For example, many of these
20 agreements have expired, and the CLECs have gone back to charging the higher
21 switched access rates.

22 **Q. ARE THESE AGREEMENTS UNIFORM?**

23 A. No, these agreements include a variety of structures, some of which only include
24 switched access services, some of which include multiple services. Some of these
25 agreements contain state specific language, some identify jurisdictional
26 difference, and others provide a single rate.

3 A. Generally, Yes. While there is variation in the CLEC agreements, the most
4 common approach, which I refer to below as the “straight benchmark” simply
5 points to the ILEC’s rate in each state as the appropriate benchmark. This agrees
6 with the FCC’s CLEC Access orders, known as the 7th and 8th report and order⁸
7 for interstate traffic, and extends the same logic to the states. The largest number
8 of were entered into between AT&T and the CLECs. The AT&T agreements fall
9 into four categories. The first is the straight benchmark. The second is the
10 benchmark, unless the CLEC switched access tariff was lower. The third type
11 references a single nationwide rate, and the fourth is a discount on Intrastate
12 switched access rates dependant upon purchasing unrelated interstate services.

13 Q. WHICH OF THESE AGREEMENTS ARE MOST COMMON?

14 A. By far, the most common version of these agreements is the benchmark
15 arrangement. *Begin Highly Confidential* Redacted

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15 ***End Highly Confidential***⁹

16 **Q. WHY DO THESE AGREEMENTS MATTER?**

17 A. First, the fact that a majority of these agreements benchmark to the ILEC rates is
18 probative of the correct rate level for CLECs in AZ. This is the rate which the
19 IXC's overwhelmingly agreed to in negotiations, and were willing to pay. This
20 language is relatively specific, calling out the rates for interstate traffic, intrastate
21 traffic, and often 8YY traffic.

22 Second, the agreements show that the CLECs have clearly concur that these lower
23 rates are appropriate for the services they provide. For the CLECs who have
24 entered into these agreements, they have already voluntarily extended these lower
25 rates to other IXC's, proving that the lower rates are appropriate. Having extended

⁹ See Highly Confidential Exhibit LHE-1 for the unredacted information.

1 those rates to their favored IXC, they cannot claim that they can not recover their
2 costs if the same rates are extended to another IXC.

3 Third, these agreements show that there is an "underground economy" for
4 switched access charges in Arizona, with rates that are unknown to the
5 Commission and not generally known or available to all IXCs. Whether
6 contracts are allowed or not, switched access reform must require that the rate that
7 any LEC charges for switched access is known and certain, does not change based
8 on the purchase of other services, and is available to any other IXC.

9 **Q. SHOULD CARRIERS BE PERMITTED TO CONTRACT FOR ACCESS**
10 **RATES THAT DIFFER FROM THEIR TARIFFED RATES?**

11 A. Qwest's position is that contracts for tariffed services may be permissible in
12 Arizona, but can not be discriminatory in nature. Without review of forward
13 looking contracts which change the rates paid by one IXC, the State has no ability
14 to determine if such agreements are in the public interest or are available in a non-
15 discriminatory manner. Without filing or posting the agreement, other IXCs do
16 not have the opportunity to contract in the same manner.

17 **Q. DO YOU HAVE ANY OTHER CONCERNS ABOUT THE VOLUME**
18 **PURCHASE ARRANGMENTS IN SOME OF THE CONTRACTS?**

19 A. Yes. Three of the companies claim **Begin Highly Confidential** Redacted
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26 Redacted | **End Highly Confidential** These carriers cannot claim that they only

1 charge the tariff rate, when the total switched access charges resulting from the
2 application of the tariff rate are reduced.

3 **Q. IS IT APPROPRIATE FOR INTRASTATE SWITCHED ACCESS RATES**
4 **TO BE INCLUDED IN VOLUME DISCOUNT AGREEMENTS FOR THE**
5 **PURCHASE OF INTERSTATE SERVICES?**

6 A. No. Such bundling of services into bulk purchase price discount arrangements
7 affect and obscure the price of intrastate switched access. Not only is it difficult
8 to determine the actual amount of discount in such agreements—it is also unlikely
9 that the duty of nondiscrimination can be satisfied when the price of a bottleneck
10 monopoly service varies and depends upon the purchase of unrelated, competitive
11 services.

12 The linking of the two purchases is not supportable. As mentioned before, special
13 access is a switched access bypass product. The two products are not logically
14 dependant upon one another- that is an IXC does not need to purchase special
15 access to reach an end user through a switch. An IXC may choose to do so
16 because they can avoid tandem switching charges- or the volumes of traffic to that
17 end user indicate that a dedicated facility is necessary. Volume discounts for
18 special access based on special access purchases have been part of contract tariffs,
19 and part of special access pricing. However, special access is a competitive
20 service, and as described earlier, switched access is a terminating monopoly
21 service. Using a competitive service as a basis for offering a discount on a
22 monopoly service obfuscates the real price of the underlying services—and allows
23 for discrimination. For these reasons, the rates for switched access service,
24 whether offered by contract, tariff, or some combination of the two, must stand on
25 their own, and not be affected by the purchase of unrelated services.

Q. COX COMMUNICATION STATED IN A NON CONFIDENTIAL DATA REQUEST THAT THE SWITCHED ACCESS RATE OFFERED TO AT&T IS THE SAME AS ITS TARIFF RATES. IS THIS TRUE?

A. No, as is apparent from Cox's own answer. Cox provided the following response to a Qwest data request:

"Cox responds that there is no difference between the contract rates and tariff rates. The contract expressly offers switched access services at the then current published tariff rates. The tariff rates in the contract are updated as the tariff is updated or changes. AT&T has the opportunity to pay less than the tariff rate for switched access services based on its purchase of Interstate special access services. AT&T's discount varies based on its special access purchase volume with a minimum threshold purchase amount. Cox offered Qwest a similar arrangement by letter dated March 7, 2008 to which Qwest failed to respond."

This response underscores the difficulty with such agreements which tie together competitive interstate special access services with bottleneck monopoly intrastate switched access services. Clearly, Cox's claim that it offers AT&T the same rate as stated in Cox's tariff is stretching the point, because that is not what AT&T pays. Qwest does not believe that this type of agreement is sustainable, or that volume discounts on a highly regulated tariff offering for the purchase of highly competitive services are appropriate. It is interesting to note that the discounts ranged from *Begin Highly Confidential* Redacted

Redacted **! *Highly Confidential*** ¹⁰ It is hard to know, and Cox has refused to state, what the effective rate actually charged to AT&T is under its agreement. It depends on the volumes of special access services AT&T purchases. Nor is it

¹⁰ See Highly Confidential Exhibit LHE-1 for the unredacted information.

1 clear how much of the special access purchases are attributable to the CLEC
2 portion of AT&T, and whether an IXC alone could partake of these volume
3 discounts. Qwest's position is that the rate actually paid for switched access
4 should be the same for every IXC for every minute of use.

5 **Q. WHAT REFORMS SHOULD BE INSTITUTED WITH RESPECT TO**
6 **THESE AGREEMENTS?**

7 A. First, as I have stated above, no agreement should provide for a discount for
8 switched access based on for unrelated services.

9 Second, every agreement that a LEC enters into that sets the rate, or impacts the
10 rate for switched access, should be promptly filed or posted for public inspection.
11 This should be the obligation of the LEC, not the customer.

12 **Q. WHAT REVENUE SOURCES SHOULD BE MADE AVAILABLE TO**
13 **CARRIERS TO COMPENSATE FOR THE LOSS OF ACCESS**
14 **REVENUES?**

15 A. First and foremost, any reduction in switched access should be recoverable in a
16 revenue neutral manner. As Qwest witness Peter Copeland fully explains, the
17 primary source of recovery should be from the local rate increase, since the
18 switched access subsidy has long been in place to keep the local rate low. Any
19 recovery from the USF should be in the manner explained by Mr. Copeland.

20 **Q. WHAT PROCEDURES SHOULD THE COMMISSION IMPLEMENT TO**
21 **ACHIEVE THE DESIRED REDUCTION IN ACCESS RATES?**

22 A. Mr. Copeland directly addresses this issue in his testimony on page 7. Clearly,
23 whatever procedures are put in place should be applied to all LECs, and should
24 not be selectively applied.

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V. SUMMARY

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. CLEC and Rural ILEC intrastate switched access rates should be reduced to the same level as Qwest's Intrastate switched access rates. This reduction would reduce arbitrage opportunities, ease market distortions, and would eliminate the discriminatory treatment some CLECs have engaged in with secret switched access agreements by making the terms and conditions of those agreements uniform.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE REVIEW AND
POSSIBLE REVISION OF ARIZONA
UNIVERSAL SERVICE FUND RULES,
ARTICLE 12 OF THE ARIZONA
ADMINISTRATIVE CODE

DOCKET NO. RT-00000H-97-0137

IN THE MATTER OF THE
INVESTIGATION OF THE COST OF
TELECOMMUNICATIONS ACCESS

DOCKET NO. T-00000D-00-0672

STATE OF DENVER
COUNTY OF DENVER

AFFIDAVIT OF
LISA HENSLEY-ECKERT

: SS

Lisa Hensley-Eckert, of lawful age being first duly sworn, deposes and states:

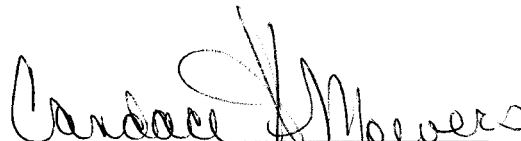
1. My name is Lisa Hensley-Eckert. I am Staff Director Public Policy for Qwest Corporation in Denver, Colorado. I have caused to be filed written Direct Testimony in Docket Nos. RT-00000H-97-0137 and T-00000D-00-0672.
2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.



Lisa Hensley-Eckert

SUBSCRIBED AND SWORN to before me this 19 day of November, 2009.


Notary Public

My Commission Expires:

4/13/10